

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

TIMOTHY BURCHAM,

PLAINTIFF

V.

NO. 1:05CV235-P-A

TAMMY WHITLEY, ET AL,

DEFENDANTS

FINAL JUDGMENT

The *pro se* plaintiff is an inmate in custody of the Lee County-Tupelo Adult Jail. The two defendants are Tammy Whitley, who owns a bail bonding company, and Nolan Oswalt, who is employed by the company owned by Ms. Whitley. Plaintiff admits that he failed to appear for a court hearing, thus violating the terms of his bond agreement. He states that as a result defendant Oswalt attempted to apprehend him. The plaintiff, who was unarmed, attempted to flee and alleges that he was then shot by Oswalt. Plaintiff contends that this proves that the defendants used excessive force in apprehending him.

Magistrate Judge S. Allan Alexander conducted a hearing pursuant to *Spears v. McCotter*, 766 F. 2d 179 (5th Cir. 1985) on October 20, 2005, then filed a Report and Recommendation on October 26, 2005, recommending that the claim be dismissed for failure to state a claim upon which relief could be granted in that the defendants were not state actors. Plaintiff on November 7, 2005, filed an Objection to the Report and Recommendation.

The court finds that plaintiff's argument is not well-taken and that the objections should be overruled for the reasons stated in the Report and Recommendation, which the court approves and adopts as its opinion.

THEREFORE, it is hereby ORDERED that

1) the plaintiff's objections to the Report and Recommendation of the United States Magistrate Judge are OVERRULED;

2) the Report and Recommendation is APPROVED and ADOPTED as the opinion of this court;

3) the cause is DISMISSED with prejudice for failure to state a complaint upon which relief could be granted; and

4) this case is CLOSED.

SO ORDERED, this the 8th day of November, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE